

STAFF REPORT FOR PROPOSED RULE ADOPTION

RULE 428: New Source Review Requirements for New and Modified Major Sources in Federally Designated Nonattainment Areas

Prepared by Northern Sierra AQMD Staff, February, 2016

Date of Public Hearing: June 8, 2016

Public Comment Deadline: June 10, 2016

Anticipated Date of Rule Adoption: June 27, 2016

INTRODUCTION

The Northern Sierra Air Quality Management District (NSAQMD) is proposing to adopt Rule 428 in fulfillment of federal requirements for a New Source Review (NSR) rule under the Clean Air Act (CAA) as amended 1990. The proposed rule would apply only in portions of the District designated as Nonattainment for National Ambient Air Quality Standards. New Source Review is a preconstruction review program for major or potentially major sources of nonattainment air pollutants and their precursor pollutants.

BACKGROUND

Western Nevada County and the Portola area have been designated under the CAA as Nonattainment areas for the 8-hour ozone National Ambient Air Quality Standards (NAAQS) and the PM_{2.5} Annual NAAQS, respectively. One of the requirements in the CAA is that nonattainment areas must adopt a New Source Review rule. Title 40 of the Code of Federal Regulations (CFR), Part 51 specifies requirements for nonattainment areas. The NSR requirements are mainly found in 40 CFR §51.160 through §51.165.

SUMMARY OF PROPOSED RULE, RULE CHANGES AND RULE RECISIONS, INCLUDING POTENTIAL IMPACTS TO AFFECTED SOURCES AND THE ENVIRONMENT

Rule 428: New Source Review Requirements for New and Modified Major Sources in Federally Designated Nonattainment Areas

A New Source Review (NSR) rule is required under the CAA for all federally designated nonattainment areas. Adoption of this rule fulfills this requirement. This rule was based on a model rule developed by EPA and ARB for California air districts. In the absence of a federally approved local NSR rule, existing federal legislation applies to new major sources in nonattainment areas. Basically, this rule codifies federal NSR requirements at the local level. Laura Yannayon of EPA has already reviewed the proposed Rule 428 and believes it is federally approvable.

NSR is a preconstruction review program that specifically applies in federally designated nonattainment areas. Preconstruction review in the rest of the air district (areas that are not nonattainment) is, instead, subject to Prevention of Significant Deterioration (PSD) rules. The requirements of this rule apply to the proposed construction of any new major stationary source or any major modification located at an existing major stationary source. A major source is currently defined as one emitting at least 100 tons per year of a regulated pollutant, although that threshold could conceivably drop in the future if attainment is not reached by specific dates. There are currently no major sources located in federal nonattainment areas within the Northern Sierra Air Quality Management District boundaries.

If a major source wishes to become established in a federal nonattainment area, there would likely be significant costs associated with obtaining the necessary emission offsets, conducting required analyses and obtaining permits. However, these costs would already be imposed by existing federal and local legislation that apply until this rule is effective. Thus, this rule does not impose any new costs on previous, existing or future sources.

Since this rule is anticipated to be used rarely, if ever, and in the interest of keeping the rule as concise as possible, some of the requirements and most of the definitions are incorporated by reference to appropriate portions of the CFR.

AUTHORITY AND RULE ADOPTION REQUIREMENTS

The District is authorized to regulate sources of air pollutants under the California Health and Safety Code (HSC) §40001 and §40702.

HSC §40728.5 requires a socioeconomic analysis for proposed rules in districts having a population greater than 500,000 persons. The NSAQMD's population is approximately 130,000, so this requirement does not apply.

This rule is exempt from the requirements of CEQA per Class 8 (§15308) of the CEQA Guidelines.

The California Health and Safety Code requires the District to comply with a rule adoption protocol as set forth in §40727 of the Code. There are six findings the District must make when developing, amending, or repealing a rule:

FINDING	DEFINITION	DETERMINATION
Authority	A provision of law or of a state or federal regulation permits or requires the regional agency to adopt, amend, or repeal the regulation.	HSC Sections 40001, 40702, and 41511. Federal Clean Air Act sections 172(c)(5) and 173.
Necessity	A need exists for the regulation, or its amendment, or appeal, as demonstrated by the record or rule making authority.	It is necessary for the NSAQMD to adopt this rule in order to comply with the Clean Air Act and thereby avoid federal sanctions.
Clarity	The regulation is written or displayed so that its meaning can be easily understood by the persons directly affected by it.	The proposed rule is written in such a manner that it can be understood by affected sources, and the rule's subsections are descriptively titled.
Consistency	The regulation is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulation.	This rule is consistent with State and federal regulations.
Non-duplication	A regulation does not impose the same requirements as an existing state or federal regulation unless a district finds that the requirements are necessary or proper to execute the powers and duties granted to, and imposed upon, a district.	This rule fills a gap in NSAQMD regulations for federally required New Source Review in nonattainment areas at the pre-application review stage.
Reference	Any statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.	This rule is being proposed consistent with the requirements of CAA Title 1, Part D, Section 172(c)(5) and 40 CFR Part 51, Sections 160-165.

RECOMMENDATION

Approval by the Northern Sierra Air Quality Management District Board of Directors of the above findings and proposed Rule 428.